

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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5 HEIDI M. JOHNSON,
6 Plaintiff,

2:18-cv-02043-JCM-VCF

7 vs.

ORDER

8 NANCY A. BERRYHILL, Acting Commissioner
9 of Social Security,
10 Defendant.

APPLICATION TO PROCEED *IN FORMA PAUPERIS*
(EFC No. 1) AND COMPLAINT (EFC No. 1-2)

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12 Before the court are Plaintiff Heidi M. Johnson's application to proceed *in forma pauperis* (ECF
13 No. 1) and Complaint (ECF No. 1-1). For the reasons stated below, Johnson's application to proceed *in*
14 *forma pauperis* is granted and she may proceed with this action.

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16 **DISCUSSION**

17 Plaintiff's filings present two questions: (1) whether Plaintiff may proceed *in forma pauperis* under
18 28 U.S.C. § 1915(e) and (2) whether Plaintiff's complaint states a plausible claim for relief. Each is
19 discussed below.

20 **I. Plaintiff May Proceed In Forma Pauperis**

21 Plaintiff's application to proceed *in forma pauperis* is granted. The court may authorize the
22 commencement of an action without prepayment of fees and costs by a person who submits an affidavit
23 that includes a statement showing the person is unable to pay such costs. 28 U.S.C. § 1915(a)(1).
24 Johnson's *in forma pauperis* application states that she is unemployed and has no money or valuable
25 property. (ECF No. 1). Accordingly, Johnson's application is granted.

1 **II. Section 1915(e) Screening**

2 Because the Court granted Plaintiff's application to proceed *in forma pauperis*, it must review
3 Plaintiff's complaint to determine whether the complaint is frivolous, malicious, or fails to state a plausible
4 claim. 28 U.S.C. § 1915(e)(2)(B). Federal Rule of Civil Procedure 8 mandates that a claim must contain
5 a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.
6 8(a). To meet Rule 8's burden, a complaint must contain "sufficient factual matter" establishing that the
7 claim is facially plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). Recitation "of a cause of action's
8 elements supported by mere conclusory statements" is insufficient to meet this standard. *Id.*

9 Johnson's complaint arises from an unfavorable decision by the Commissioner of the Social
10 Security Administration ("Commissioner"). (ECF No. 1-2). Johnson asserts that the Administrative Law
11 Judge ("ALJ") committed an error by improperly rejecting the treating mental health provider's opinion,
12 the claimant's testimony, and a lay witness's testimony without substantial evidence. (*Id.* at 3). The
13 Plaintiff also asserts that the Commissioner erred by not applying the appropriate standard of law. (*Id.*).
14 The Plaintiff asserts that she should be found eligible for Social Security Disability Insurance disability
15 benefits and/or Supplemental Security Income benefits. (*Id.*). Johnson has appealed the decision of the
16 Commissioner to this court, and requests the court reverse the Commissioner's decision, or in the
17 alternative remand the action for a new hearing. (*Id.* at 3-4).

18 Johnson may appeal to this court the Commissioner's denial of her application for disability
19 insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act,
20 respectively. *See* 42 U.S.C. §§ 405(g), 1383(c)(3). This Court has jurisdiction over the matter. *Id.*
21 Construing Johnson's allegations in a light most favorable to her, the Court finds she has asserted a claim
22 upon which relief can be granted.
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2 Accordingly, and for good cause shown,

3 IT IS ORDERED that Plaintiff's Application to Proceed *In Forma Pauperis* (ECF No. 1) is
4 GRANTED.

5 IT IS FURTHER ORDERED that the Plaintiff is permitted to maintain the action to conclusion
6 without the necessity of prepayment of any additional fees, costs, or security. This order granting *in forma*
7 *pauperis* status does not extend to the issuance of subpoenas at government expense.

8 IT IS FURTHER ORDERED that the Clerk of the Court file the Complaint (ECF No. 1-2) and
9 serve the Commissioner of the Social Security Administration by sending a copy of the Summons and
10 Complaint by certified mail to: (1) the Attorney General of the United States, Department of Justice, 950
11 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530; and (2) Office of the Regional Chief
12 Counsel, Region IX, Social Security Administration, 160 Spear St., Suite 899, San Francisco, CA 94105-
13 1545.

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15 IT IS FURTHER ORDERED that the Clerk of Court issue Summons to the United States Attorney
16 for the District of Nevada and deliver the Summons and Complaint to the U.S. Marshal for service.

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1 IT IS FURTHER ORDERED that from this point forward, Plaintiff must serve upon defendant, or
2 his attorney if he has retained one, a copy of every pleading, motion, or other document submitted for
3 consideration by the court. Plaintiff must include with the original paper submitted for filing a certificate
4 stating the date that a true and correct copy of the document was mailed to the defendants or their counsel.
5 The court may disregard any paper received by a district judge, magistrate judge, or the Clerk which fails
6 to include a certificate of service.

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8 DATED this 1st day of November, 2018.

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11 CAM FERENBACH
12 UNITED STATES MAGISTRATE JUDGE
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